
FREQUENTLY ASKED QUESTIONS

Equality Act

GENERAL QUESTIONS

1. What does the Equality Act do?

The Equality Act provides explicit protections from discrimination based on an individual's sexual orientation or gender identity at work and in the context of housing, credit, education, and jury service. It also prohibits discrimination based on sexual orientation, gender identity, and sex in programs that receive federal funding and places of public accommodations. Finally, the bill expands the list of protected places of public accommodations to include retail stores, transportation services like airports, taxis and bus stations, and service providers like accountants, for all protected characteristics.

2. Why is the Equality Act necessary?

LGBTQ people across the country remain vulnerable to discrimination on a daily basis. In many states, LGBTQ people have no explicit non-discrimination protection under state law. This current patchwork of protections for LGBTQ people across the country is problematic. While the Supreme Court recognized that LGBT people are protected from employment discrimination under existing federal sex discrimination protections in *Bostock v. Clayton County*, updating our laws to make those protections explicit will ensure that every person, every employer, and every business knows that discrimination is wrong and illegal.

3. Do we still need the Equality Act in light of the Supreme Court's decision in *Bostock v. Clayton County*?

Yes. LGBTQ people need clear and secure guarantees against discrimination under the full range of contexts addressed by our federal civil rights laws. While the Supreme Court correctly recognized that discrimination based on transgender status or sexual orientation is always sex discrimination, there are no federal protections at all from sex discrimination in key areas such as public accommodations and most areas of federal funding. This means that LGBTQ people and all women across the country remain vulnerable to discrimination on a daily basis and too often have little or no recourse. The protections under existing law are a critical step forward, but no one should need a lawyer to navigate their rights – every person and every employer should know that discrimination is wrong and illegal.

4. Are religious entities covered under the Equality Act?

The Equality Act updates the law to add explicit protections for discrimination based on sex, sexual orientation, and gender identity to existing civil rights laws. It does not change the religious exemptions already in place in federal law. Those religious entities that are

currently exempt will remain exempt, with regard to expressing a preference for people of their faith in employment, (under Sections 702(a) and 703(e) of Title VII) and for the sale, rental, or occupancy of a dwelling owned by a religious organization for non-commercial purposes (under Section 3607 of the Fair Housing Act). Houses of worship are not places of public accommodation when serving their congregations including for prayer services, weddings, and pot-luck dinners (under Section 2000a(e) of Title II).

5. Why does the Equality Act protect people who are perceived to be LGBTQ?

Individuals who are perceived to be lesbian, gay, bisexual, or transgender, but who are not, often face the same discrimination experienced by LGBTQ people. Therefore, it is necessary for the Equality Act to cover these individuals. Similar discrimination occurs based on mistaken perceptions about race, national origin, and religion, thus the Equality Act ensures that anyone who experiences discrimination because of others' mistaken perceptions about them has grounds to remedy the discrimination.

6. Why does the Equality Act protect people who associate with LGBTQ people from discrimination?

Like the Fair Housing Amendments Act and the Americans with Disabilities Act, which prohibit discrimination against those who associate with people with disabilities, the Equality Act prohibits discrimination against people who associate with LGBTQ people. Heterosexual people, including parents and siblings of LGBTQ people, are often subject to harassment and other discrimination at work and in public accommodations because of their association with their family member or friend. Children of LGBTQ people also face discrimination and harassment at school, and by places of public accommodation, including medical services and recreational facilities. Such individuals are not perceived to be LGBTQ themselves (and therefore, would not be covered on that basis), but rather, are discriminated against solely because of their association. The Equality Act also clarifies existing law to ensure that these protections apply to anyone who experiences discrimination because they associate with someone of a different race, color, sex, religion, or national origin.

7. Are gender nonbinary people protected under the Equality Act?

Yes. Some individuals who are gender nonbinary identify as neither male nor female. Gender nonbinary individuals can include people who are agender, bigender, genderfluid or gender nonconforming. Some gender nonbinary people identify as transgender while others do not. Gender nonbinary individuals frequently face discrimination based on others' expectations tied to sex stereotypes. State and local laws that protect LGBTQ individuals provide protections for gender nonbinary individuals as part of those protections. Naming gender nonbinary people within the Equality Act's findings makes this explicit and is a proactive way to ensure inclusion.

8. Why does the Equality Act address claims of intersectional discrimination?

Sometimes people experience discrimination because of a combination or intersection of multiple protected characteristics – in other words, a Black woman may experience discrimination that targets her expressly because of the combination of her race and gender.

The Equality Act expressly recognizes that such discrimination is actionable, in line with the view of a majority of federal courts.

9. Why does the Equal Act address the Religious Freedom Restoration Act (RFRA)?

The federal government has a well-settled compelling interest in eradicating discrimination through robust enforcement of our non-discrimination laws. As the findings to the Equality Act recognize, this interest extends to eradicating discrimination based on sexual orientation and gender identity. That means businesses covered by federal civil rights laws should not be able to use RFRA to defend discrimination, and we should not leave that as an open question for the courts. Making this explicit ensures that the federal government doesn't have to defend non-discrimination laws against businesses that want to engage in harmful discrimination, including at the taxpayers' expense.

10. Why are the terms “Sexual Orientation” and “Gender Identity” included within “Sex”?

The Supreme Court's decision in *Bostock v. Clayton County* recognized that discrimination based on sex encompasses discrimination based on sexual orientation and transgender status. The Equality Act recognizes and codifies this legal precedent.

SPECIFIC PROVISIONS OF THE EQUALITY ACT

Title II Public Accommodations and Title III Desegregation of Public Facilities

1. Who is protected from discrimination in public accommodations and public facilities under the equality act?

Titles II and III of the Civil Rights Act of 1964 prohibits discrimination in places of public accommodation on the basis of race, color, religion, or national origin. The Equality Act adds protections against discrimination on the basis of sex, sexual orientation, and gender identity, which will prohibit discrimination against LGBTQ people and all women in places of public accommodation and public facilities.

2. Does the Equality Act change what is considered a “public accommodation?”

Yes. In addition to the places of public accommodation like restaurants and hotels already included in the 1964 Civil Rights Act, the Equality Act updates the law to ensure that other important providers of goods and services like stores, accountants, and banks do not discriminate on the basis of any protected characteristic. Transportation providers including trains, taxis, and airlines are also included within the Equality Act.

3. Why are these protections necessary?

LGBTQ people and all women, particularly pregnant and breastfeeding women, experience discrimination and harassment while accessing public accommodations across a wide range of contexts – including restaurants, stores, hotels, theaters, and transportation services. People of color also continue to face persistent discrimination on a daily basis in stores,

salons, and in accessing transportation including car services and taxis. Whether denied service or experiencing unfair treatment or harassment, this discrimination impedes individuals from fully participating in social and public spaces. Updating the law will ensure that no one is denied the ability to fully participate in public spaces and services just because of who they are.

Title IV Desegregation of Public Education

1. Who is protected from discrimination in education under the Equality Act?

Title IV of the Civil Rights Act of 1964 currently prohibits discrimination on the basis of race, color, religion, sex, or national origin. The Equality Act adds sexual orientation and gender identity to this list of protected characteristics that cannot be used as a basis for assigning public school students to particular schools or programs within public schools. By including sexual orientation and gender identity as explicitly protected categories under Title IV, the Equality Act makes clear that individuals who have experienced discrimination in admission or enrollment at a public school or college may file a complaint with the Attorney General. The Equality Act also amends Title VI, which expands protections in the context of federal funding – including in education – on the basis of sex, sexual orientation, and gender identity.

2. What schools are covered under the Equality Act?

Title IV covers all public schools including elementary or secondary educational institutions and public colleges, which include any institution of higher education or any technical or vocational school above the secondary school level that is operated by a state. Title IV does not cover private schools. The Equality Act neither alters the types of schools covered by Title IV nor applies to private schools itself, except those that receive federal funding and are therefore already covered under Title VI.

Title VI Federal Funding

1. Who is protected from discrimination in federal funding under the Equality Act?

Title VI of the Civil Rights Act of 1964 prohibits discrimination in federally assisted programs on the basis of race, color, and national origin. The Equality Act adds discrimination on the basis of sex, sexual orientation, and gender identity to this list of protected characteristics. This would prohibit discrimination against LGBTQ people and women in federally assisted programs or services and would make denying people access to federal benefits or excluding them from a federally assisted program solely on the basis of their sex, sexual orientation, or gender identity unlawful.

(Title IX of the Civil Rights Act already prohibits sex discrimination in federally funded programs. The Equality Act would not change that prohibition, and claims and remedies under that Title IX would remain under the Equality Act.)

2. What entities are covered under the federal funding portion of the Equality Act?

The Equality Act amends Title VI by including sex, sexual orientation, and gender identity as

protected characteristics. The entities covered under that title are not changed by the Equality Act. Any entity that accepts federal funding, whether through a contract, grant, award, or other form of funding, is a covered entity. Acceptance of federal funds is voluntary.

3. What types of programs receive federal funds?

Federal funding touches the lives of LGBTQ people in every state and every county in America – from schools and community centers to senior centers, homeless shelters, and substance abuse rehabilitation facilities. Taxpayers fund critical social and community services including disaster relief, Meals on Wheels, mortgage assistance, and healthcare subsidies. Discrimination in any of these settings undermines equal access to services and programs for LGBTQ people.

4. Why are these protections important?

LGBTQ people and women face widespread discrimination in employment and services from entities accepting federal funds and as recipients of federal financial assistance. The Equality Act will ensure that everyone, regardless of their sexual orientation, gender identity, or sex can participate in federal programs that are supported by taxpayers.

Title VII Employment

1. Who is protected under the employment section of the Equality Act?

Title VII of the Civil Rights Act of 1964 currently prohibits discrimination in employment on the basis of race, color, religion, sex, and national origin. The Equality Act adds sexual orientation and gender identity explicitly to that list. It codifies the protection against discrimination on the basis of sex stereotyping detailed in *Price Waterhouse v. Hopkins*, a landmark Supreme Court case, and the Court's recent decision in *Bostock v. Clayton County* that discrimination based on transgender status and sexual orientation are forms of prohibited sex discrimination.

2. How will the Equality Act impact a business's equal employment obligations under Title VII?

The Equality Act updates Title VII by making explicit that the existing federal sex discrimination protections encompass protections from discrimination based on sexual orientation and gender identity, and that discrimination against LGBTQ people in hiring, firing, and promotions is unlawful. Because the Supreme Court has already recognized that existing sex discrimination protections under Title VII protect LGBTQ people, the Equality Act will not materially change a business's obligations under the law.

It will simply provide employers and employees alike with clear rules that everyone knows and can follow.

3. What does this mean for bona fide occupational qualifications?

The Equality Act does not alter the general reach and applicability of the bona fide

occupational qualifications (BFOQ) defense. However, when a BFOQ is used to justify employment or training decisions on the basis of sex, individuals must be recognized as qualified in accordance with their gender identity. It is important to note that courts have deemed very few BFOQs to be permissible in practice.

4. How will the Equality Act impact sex-segregated facilities?

Under the Equality Act, companies with sex-segregated facilities including restrooms and locker rooms must provide access to gender-appropriate facilities for individuals in accordance with their gender identity.

5. What actions of an employer are covered under the Equality Act?

The Equality Act adds explicit protections against sexual orientation and gender identity discrimination to Title VII. Therefore, the same standards under existing law apply to sexual orientation and gender identity discrimination. Current law applies to an employer's decisions regarding employment and employment opportunities, such as hiring, firing, promotion, training, or compensation and benefits. The Act requires that an individual's sexual orientation or gender identity may not be a factor in such decisions.

6. What would an individual have to show to prove discrimination under the Equality Act?

The Equality Act makes clear that the same standards under existing law apply to sexual orientation and gender identity discrimination. The individual must demonstrate that the discrimination was based on a covered characteristic. For example, it is acceptable differential treatment for a company to refuse hire a lesbian who is a teenager for a full-time position based on her age. However, it is impermissible discrimination for a company to refuse to hire a woman simply because she is married to another woman.

In contexts other than explicit exclusion, individuals claiming discrimination bear the burden of proving that discrimination based on sexual orientation or gender identity occurred, and that they were otherwise qualified for the opportunity. The employer can present evidence to show the adverse action was taken because of some legitimate, non-discriminatory reason. For example, an employer cannot terminate an employee simply because the employee's parent or spouse is transgender. This would be discrimination based on that individual's association with someone who is transgender and is therefore unlawful. However, an employer retains the same rights regarding decisions pertaining to hiring, promotion, and termination that are currently available under Title VII. Thus, an employer could lawfully terminate an employee who is not performing well or is violating company policy regardless of the sexual orientation or gender identity of that employee.

7. Won't this result in a flood of unnecessary lawsuits?

No. The Equal Employment Opportunity Commission has been accepting claims of gender identity discrimination since 2011 and of sexual orientation discrimination since 2013 for processing and voluntary resolution. The Equality Act codifies this existing area of sex discrimination guidance and practice, providing increased clarity for everyone.

In 2013, the Government Accountability Office (GAO) issued a report surveying the number of claims filed with state authorities in 21 states and D.C. that then had statutes barring employment discrimination based on sexual orientation, 17 of which (and D.C.) also barred discrimination based on gender identity at that time. The GAO found that “the administrative complaint data reported to [the GAO] by states for 2007 through 2012 show relatively few employment discrimination complaints based on sexual orientation and gender identity.” On average, claims based on sexual orientation or gender identity were about 3-4% of the total number of employment discrimination claims. (Report GAO-13-700R, July 31, 2013). (Note: the number of states providing employment protections on the basis of sexual orientation and gender identity has risen since the GAO survey concluded.)

In 23 states and hundreds of localities across the country, employers have already been bound by laws that prohibit discrimination against at least some members of the LGBTQ community. Hundreds of companies have voluntarily adopted EEO policies that include sexual orientation and gender identity. If protecting LGBTQ employees created a tidal wave of litigation or bankrupted companies, we certainly would have seen that. Instead, non-discrimination laws can decrease the incidents of discrimination by placing both employers and employees on notice that discriminatory behavior is both unacceptable and illegal. We have seen businesses succeed and American families protected – and that should be the reality for our entire nation.

8. What kind of relief is available under the Equality Act for employment discrimination?

The Equality Act makes clear that the same enforcement mechanisms and remedies under existing law also apply to sexual orientation and gender identity discrimination. This means a complainant must go through the administrative mechanism of the Equal Employment Opportunity Commission. That person may then file a lawsuit in federal court and, if successful, may receive injunctive relief, such as reinstatement and/or back pay. Compensatory and punitive money damages may be received to the extent such damages are allowed under Title VII. Attorney's fees are available.

Fair Housing Act

1. Who is protected from discrimination in housing under the Equality Act?

The Fair Housing Act currently prohibits discrimination in housing by landlords and real estate companies as well as other entities, including municipalities, banks, and other lending institutions and homeowners insurance companies on the basis of race, color, religion, sex, national origin, familial status, or disability. The Equality Act adds explicit protections from discrimination based on sexual orientation and gender identity into the Fair Housing Act's list of protected personal characteristics. This includes protections from discrimination in the sale or rental of housing and access to brokerage services based on sexual orientation or gender identity.

2. What entities are covered under the Equality Act?

The Fair Housing Act and the Equality Act apply to direct providers of housing, which include landlords and real estate companies, as well as other entities involved with homeownership or rental. It also applies to municipalities, banks, and other lending institutions and insurance companies. It does not apply to private homeowners renting a room or apartment in their own home. It also does not cover individuals seeking roommates.

3. Does the Equality Act have an exemption for religious organizations?

Yes. The Equality Act does not change the religious exemption that is currently part of the Fair Housing Act. This exemption preserves the ability of a religious organization or nonprofit institution operated by a religious organization to sell, rent, or occupy a dwelling that the organization owns or operates for persons of the same religion, as long as it is not operated for commercial purposes.

4. Why are federal housing protections important for LGBTQ people?

National surveys, including a study commissioned by the Department of Housing and Urban Development, show that LGBTQ people frequently experience discrimination when seeking to rent or purchase a home. Housing discrimination takes a variety of forms. Same-sex couples may experience discrimination when shopping for a home or renting an apartment by a prospective landlord or seller. Real estate agents may also refuse to show a same-sex couple or transgender person a home in a particular area of the city simply because of who they are.

5. Will the Equality Act impact owner-occupied rental housing?

No. The Fair Housing Act includes exemptions for both owner-occupied rental housing with three or fewer units, as well as individual roommate arrangements. The Equality Act would not alter these protections and homeowners and individuals seeking a roommate could continue to make these choices without taking the FHA into account.

Equal Credit Opportunity Act

1. What does the Equality Act mean for credit?

The Equal Credit Opportunity Act prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, or age with respect to credit transactions. The Equality Act adds sexual orientation and gender identity as explicitly protected personal characteristics under the Equal Credit Opportunity Act. The Equality Act does not alter the ability of a creditor to make lawful inquiries regarding marital status, age, or public assistance, or to use empirical data in determining an applicant's credit-worthiness.

Jury Selection and Service Act

1. Who is protected from discrimination in jury service under the Equality Act?

The Jury Selection and Services Act currently ensures that citizens cannot be excluded from jury service simply on the basis of race, color, religion, sex, national origin, or economic status. The Equality Act adds sexual orientation and gender identity as explicitly protected

characteristics under the Jury Selection and Services Act.

2. What courts are covered by the Equality Act?

The Jury Selection and Services Act prohibits discrimination in the context of federal courts.

3. Why is jury service important for the LGBTQ community?

The right to an impartial jury of one's peers and the right to serve on a jury are basic rights included in the Bill of Rights. These are fundamental and foundational to the fairness we expect and deserve from our legal system and democracy. The LGBTQ community has a long history of experiencing discrimination when being considered for jury service, and also as litigants, witnesses, and lawyers in cases decided by biased juries that lacked openly LGBTQ members. Routine exclusion of LGBTQ people from jury service too often results in a miscarriage of justice.